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District Counsel

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,

Debtor.

Tax ID #: 94-6002897
Address: 869 N. Cherry St.
Tulare, CA 93274

CASE NO. 17-13797

Chapter 9

DC No.: WW-8

Date: November 30, 2017
Time: 9:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEBTOR'S
MOTION FOR AN ORDER LIMITING NOTICE PURSUANT TO 11 U.S.C. §§ 102,
105(a) AND 901 AND BANKRUPTCY RULES 2002(m) AND 9007**

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1 Tulare Local Healthcare District, dba Tulare Regional Medical Center ("TRMC"),
2 the debtor in the above-captioned case, submits this memorandum of points and
3 authorities in support of its motion for entry of an order establishing notice procedures
4 for this Chapter 9 case ("Motion"), and represents as follows:

5 I. GENERAL BACKGROUND

6 The background history to this Chapter 9 case is well known to the Court given
7 the papers filed in connection with the Debtor's Motion to Reject Executory Contract
8 (Healthcare Conglomerate Associates, LLC) (ECF No. 32) and the Statement of
9 Qualifications and Memorandum of Facts and Law in support thereof filed on October
10 26, 2017 (ECF No. 145).

11 Due to its financial problems and the governance disputes and to head off a
12 threatened shut down of the hospital by Healthcare Conglomerate Associates, LLC, on
13 September 30, 2017, TRMC filed its Chapter 9 Petition in the United States Bankruptcy
14 Court for the Eastern District of California, Fresno Division.

15 II. RELIEF REQUESTED

16 TRMC is requesting the Court to implement a streamlined procedure for
17 providing certain notices as authorized by the Bankruptcy Rules and the Bankruptcy
18 Code by limiting the parties required to receive certain notices as well as the method by
19 which notice must be provided. Such a streamlined approach to notice is prudent
20 because requiring mailed notices for every hearing and proposed action in this case to
21 the approximately 750 persons listed on TRMC's list of creditors and interested parties
22 would be impractical and would impose substantial administrative and economic
23 burdens. Further, as discussed more fully below, the Court is authorized to implement
24 such procedures pursuant to 11 U.S.C. §§ 102(1), 105(a), 901 and Bankruptcy Rules
25 2002 and 9007.

26 Accordingly, as permitted by Bankruptcy Rules 2002(i) and 2002(m), TRMC
27 hereby proposes that the Court enter an order establishing certain notice procedures
28 which will (1) limit the number of parties upon whom notice must be served on all

1 matters other than those described in BR 2002(a)(5), (7), (b), and (f), as applicable; and
2 (2) designate the manner of service as authorized by the Bankruptcy Code and the
3 Bankruptcy Rules including matters subject to Bankruptcy Rules 2002, 4001, 6006, or
4 7004.

5 III. SPECIAL NOTICE PARTIES

6 By this Motion, TRMC proposes that the court order that notice of all matters¹
7 need be served only on the following parties ("Special Notice Parties"):

8 a. TRMC's Chapter 9 counsel, as follows:

9 Walter Wilhelm Law Group
10 Riley C. Walter
11 205 E. River Park Circle, Suite 410
12 Fresno, CA 93720
Email: rileywalter@w2lg.com

13 b. TRMC's District Counsel, as follows:

14 McCormick Barstow, LLP
15 Mandy L. Jeffcoach
16 7647 N. Fresno Street
17 Fresno, CA 93720
E-mail: Mandy.Jeffcoach@mccormickbarstow.com

18 c. The Office of the United States Trustee, as follows:

19 U.S. Department of Justice, Office of the U.S. Trustee
20 Gregory S. Powell, Assistant U.S. Trustee
21 2500 Tulare Street, Suite 1401
22 Fresno, CA 93721
Email: greg.powell@usdoj.gov

23
24 d. Wilmington Trust as Successor Indenture Trustee and Successor Paying
Agent, as follows:

25 Mintz Levin, et al
26 Ian A. Hammel
27 One Financial Center
28 Boston, MA 02111
E-mail: iahammel@mintz.com

¹ Excluding those matters described in Bankruptcy Rule 2002(a)(5) and (7), (b) and (f), as noted above.

1 Mintz Levin, et al
2 William Kannel
3 One Financial Center
4 Boston, MA 02111
5 E-mail: bkannel@mintz.com

6 Mintz Levin, et al
7 Abigail O'Brient
8 Century Plaza Towers 2029 Century Park East
9 Los Angeles, CA 90067
10 E-mail: AVObrient@mintz.com

11 e. California Department of Public Health, as follows:

12 California Attorney General's Office
13 Craig D. Rust, Deputy Attorney
14 1300 "I" Street Ste. 125
15 Sacramento, CA 95814-2951
16 Email: craig.rust@doj.ca.gov

17 f. Those creditors and parties in interest who properly file and serve on TRMC's
18 Chapter 9 counsel a request for special notice or appearance;

19 g. Counsel for any committee appointed under Section 1102, or in the event that
20 such a committee has not been or is not appointed, each creditor included on the list of
21 twenty largest unsecured creditors, as amended; and

22 h. Parties against whom direct relief is sought by motion, application or
23 otherwise.

24 IV. MANNER OF SERVICE

25 TRMC requests that such service be made to the Special Notice Parties by
26 facsimile, email, or the CM/ECF System, when possible, or by U.S. Mail or overnight
27 delivery if otherwise, unless a different manner of service is specifically requested by
28 pleading filed with the Court and served on the Special Notice Parties at least fourteen
days prior to the time such service is required to be made.

Other than notice through CM/ECF as discussed more fully below, and unless
otherwise required by Bankruptcy Rule 7004(h) or order of the Court, all mailed notices
in this case shall be provided by first class mail.

1 The filing of a pleading in this case on behalf of a Special Notice Party through
2 the CM/ECF system, other than a proof of claim, shall constitute consent to receive all
3 future notices through the CMF/ECF system. Such party may also request to receive
4 notice by first class or electronic mail by filing and serving on TRMC's Chapter 9
5 counsel a request for alternative notice and/or a change of address form.

6 To the extent that the foregoing does not apply, any party filing a motion,
7 complaint, response, objection, notice, application, request, or other paper in this
8 bankruptcy case shall be deemed to have consented to receive effective notice at the
9 address appearing on such paper, and any notice sent to said address shall be deemed
10 effective.

11 V. MATTERS NOT SUBJECT TO LIMITATIONS ON NOTICE

12 Unless otherwise ordered by the Court, the notice limitations proposed by this
13 Motion shall not apply to matters or proceedings referred to in Bankruptcy Rules
14 2002(a)(5) and (7), (b) and (f), as applicable. Such matters or proceedings shall be
15 noticed in accordance with the Bankruptcy Rules. Additionally, TRMC already has filed
16 its "Application for an Order (1) Directing and Approving Form of Notice; and (2) Setting
17 Deadline for Filing Objections to Petition" setting forth proposed procedures for
18 providing the notice required pursuant to Section 923 of the Bankruptcy Code.

19 VI. ARGUMENT

20 1. The Court is Authorized to Grant the Relief Requested.

21 By this Motion TRMC is requesting an order limiting the number of parties who
22 must receive notice of certain matters and directing the method and manner of notice to
23 such parties. Such an order is authorized by the Bankruptcy Code. Bankruptcy Code §
24 102(1) permits the estate to take certain actions other than in the ordinary course of
25 business "after notice and a hearing." Such action may occur "after such notice as is

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1 appropriate in the particular circumstances, and such opportunity for a hearing as is
2 appropriate in the particular circumstances " 11 U.S.C. § 102(1)(A). Additionally,
3 Section 105(a) provides that the Court may issue any order that is necessary or
4 appropriate in order to carry out the provisions of the Code. 11 U.S.C. § 105(a). The
5 relief requested herein is not inconsistent with the provisions of the Code.

6 The relief requested is also authorized by the Bankruptcy Rules. Bankruptcy
7 Rules 2002(m) and 9007 grant the Court general authority to regulate notice. Rule
8 2002(m) states that the Court may "enter orders designating the matters in respect to
9 which, the entity to whom, and the form and manner in which notices shall be sent...."
10 Rule 9007 states that "[w]hen notice is to be given under these rules, the court shall
11 designate, if not otherwise specified herein, the time within which, the entities to whom,
12 and the form and manner in which the notice shall be given." TRMC submits that the
13 notice procedures outlined herein comport with Bankruptcy Rule 2002(i), which requires
14 that notice of all matters must be provided to official committees.²


15 **2. The Proposed Notice Procedures are Reasonable.**

16 TRMC anticipates that numerous creditors and parties in interest will file notices
17 requesting service in this case. In fact, this has already proven to be true. Additionally,
18 TRMC anticipates that it and other parties may file frequent and potentially voluminous
19 pleadings during the course of the case. Given that TRMC has in excess of seven
20 hundred and fifty creditors, the administrative costs involved in facilitating the service of
21 paper copies on all parties for all matters will impose tremendous administrative and
22 economic burdens on TRMC and other moving parties but will not comparatively
23 enhance the notice provided. Moreover, having to comply with such strict noticing
24 requirements will prevent TRMC from focusing its limited resources on its foremost
25 objective which is to adjust its obligations so that it can provide quality healthcare to its
26 constituents. Last, because it is possible for any creditor to be included on the Special
27 Notice List by filing a request with the Court, implementation of the requested noticing
28 procedures will not diminish creditor participation.

² TRMC notes that pursuant to Bankruptcy Code § 1102(a)(1), made applicable in Chapter 9 cases by § 901(a), the United States Trustee may not appoint an official committee until after the entry of an order for relief.

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WALTER WILHELM LAW GROUP,
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Danielle J. Bethel, Attorneys for Debtor
Tulare Local Healthcare District, dba
Tulare Regional Medical Center